

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA)	
)	Criminal No.: 3:00-CR-400-P
v.)	
)	Judge Jorge A. Solis
MARTIN NEWS AGENCY, INC.; and)	
BENNETT T. MARTIN,)	
)	FILED: January 16, 2002
Defendants.)	

RESPONSE OF THE UNITED STATES TO DEFENDANTS'
JOINT MOTION IN LIMINE TO EXCLUDE
REFERENCE OF WITNESS ALAN HOSTETTER'S
AFFILIATION WITH DEFENSE COUNSEL'S LEGAL FIRM

I
INTRODUCTION

Defendants have filed with this Court a *Motion in Limine to Exclude Reference of Witness Alan Hostetter's Affiliation with Defense Counsel's Legal Firm*, asking the Court to prohibit the government from bringing out for the jury that defense witness Alan Hostetter is a member of defense counsel's law firm. Defendants request a hearing outside the presence of the jury on the admissibility of the witness' affiliation with defense counsel's law firm prior to the government raising the issue before the jury.

The government does intend to cross-examine Alan Hostetter, if called as a defense witness, regarding his affiliation with defense counsel's law firm. That Alan Hostetter will be testifying for the defense while working as a lawyer at defense counsel's firm so directly goes to his bias and motivation for testifying that the jury should hear about this relationship to properly

evaluate his credibility. Accordingly, defendants' Motion to prohibit the government from referring to Hostetter's affiliation with their attorneys' law firm should be denied.

II FACTS

Alan Hostetter became a member of Burleson, Pate & Gibson, L.L.P. ("Burleson Pate") in 1998. Hostetter served as attorney for defendant Martin News Agency, Inc. ("Martin News") from the mid-1980s through 1995, and he became an employee of the company in 1996. Hostetter joined Burleson Pate while the firm was representing the defendant Bennett T. Martin in the criminal investigation resulting in this case. Michael P. Gibson, representing defendant Bennett T. Martin, is a named partner of Hostetter's firm; Richard A. Anderson, representing defendant Martin News, is of counsel to the firm. As a member of the firm, Hostetter shares in the firm's profits.

Hostetter's relationship with the lawyers who represent the defendants and who will question him as a trial witness unquestionably raises issues of his bias, motives and credibility. That Hostetter joined the firm after the charged conspiracy does not diminish the bias. The bias stems from his current employment at the firm representing the defendants.

III EVIDENCE OF BIAS IS RELEVANT AS PROBATIVE OF CREDIBILITY

Although not specifically addressed by the Federal Rules of Evidence, it is well-established that any party should be able to impeach a witness by showing the witness' bias. United States v. Abel, 469 U.S. 45, 50-51 (1984). The credibility of a witness is always relevant, and evidence of bias is probative of credibility. United States v. Leslie, 759 F.2d 366, 379 (5th Cir. 1985) ("Any incentive a witness may have to falsify his testimony, commonly referred to as

bias, is relevant to the witness's credibility and the resulting weight the jury should accord to the witness's testimony.") (citations omitted). The Supreme Court in Abel explained the relevance of bias as follows: "A successful showing of bias on the part of a witness would have a tendency to make the facts to which he testified less probable in the eyes of the jury than it would be without such testimony." Abel at 51. The jury should hear "all evidence that might bear on the accuracy and truth of a witness' testimony." Id. at 52.

The relationship between Alan Hostetter and the lawyers for the defendants make it more probable that Hostetter is biased toward the defense. Hostetter's testimony may be influenced by his employment, financial, personal, or other ties to counsel for the defendants. Furthermore, Hostetter may be biased in favor of the defendants because of his previous long-term relationship with defendant Ben Martin as his lawyer, then his employee. Hostetter's relationship to the defendants and their lawyers is relevant to bias, and therefore admissible under Rules 401 and 402 of the Federal Rules of Evidence. The Fifth Circuit has upheld the impeachment of a witness based on his employment with the defense lawyer's firm. United States v. Alfonso, 552 F.2d 605, 617 (5th Cir. 1977) (holding government could impeach its witness — a former FBI agent employed as an investigator for defense counsel at the time of trial — after defense elicited favorable testimony on cross-examination). Similarly, the government should be able to cross-examine Hostetter to elicit evidence of his relationship to the defendants and the defense lawyers. The government requests that this Court deny the defendants' motion in all respects. Not only should the government be able to cross-examine Hostetter on his relationship to defense counsel, but the government should be able to bring out this evidence without this Court first conducting a hearing outside the presence of the jury to determine its admissibility.

The law without question provides that a party should be able to disclose a witness' bias, either through cross-examination or extrinsic evidence. See, e.g., United States v. Abel, 469 U.S. 45, 50-51 (1984); United States v. Leslie, 759 F.2d 366, 379 (5th Cir. 1985); United States v. Haggett, 438 F.2d 396, 398-99 (2d Cir. 1971). Defendants cite no cases in support of their request to prohibit the government from revealing Hostetter's bias to the jury. It is not necessary for this Court to require a hearing before the government introduces to the jury that Hostetter works for defense counsel's firm. This Court has discretion, under Federal Rules of Evidence 403 and 611(a), to limit the extent of cross-examination. However, the government requests that this Court allow it to reveal Hostetter's bias to the jury, so that the jury can properly evaluate him as a witness, without first conducting a hearing on the admissibility of the evidence.

IV
CONCLUSION

For the foregoing reasons, the United States requests that this Court deny defendants' Motion.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

This is to certify that the undersigned attorney left a telephone message with Michael P. Gibson, counsel for Bennett T. Martin, and Richard A. Anderson, counsel for Martin News Agency, Inc., on January 15, 2002, advising them of this Motion, and the undersigned lawyer represents to the Court that the defendants oppose this Motion.

SIGNED this 15th day of January, 2002

“/s/”
RICHARD T. HAMILTON, JR.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via Federal Express to the Office of the Clerk of Court on this 15th day of 2002. In addition, copies of the above-captioned pleading were served upon the defendants via Federal Express on this 15th day of 2002.

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